

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STANLEY YELARDY,	§	
	§	No. 159, 2010
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0303008652A
Appellee.	§	

Submitted: October 29, 2010

Decided: January 31, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

**ORDER**

This 31<sup>st</sup> day of January 2011, upon careful consideration of the briefs on appeal and the Superior Court record, it appears to the Court that:

(1) The appellant, Stanley Yelardy, filed this appeal from the Superior Court’s March 2, 2010 order denying his motion for postconviction relief under Superior Court Criminal Rule 61 (“Rule 61”). We have determined that there is no merit to the appeal and, accordingly, affirm the judgment of the Superior Court.

(2) In 2003, Yelardy was charged with four counts of Robbery in the First Degree and related offenses. Yelardy proceeded *pro se* at his jury trial in August 2004. Yelardy elected not to testify at trial.

(3) The jury convicted Yelardy on all counts. On January 19, 2005, Yelardy was sentenced as a habitual offender to 160 years at Level V followed by decreasing levels of probation. Thereafter, Yelardy elected to proceed *pro se* on direct appeal. By order dated February 20, 2008, we affirmed Yelardy's convictions and sentence.<sup>1</sup>

(4) On April 29, 2009, Yelardy filed a motion for postconviction relief. Yelardy alleged that he was denied the right to counsel and the effective assistance of counsel. Yelardy also alleged that the Superior Court's "incorrect application and interpretation" of Delaware Rule of Evidence 609(b) ("DRE 609(b)") "operated to dissuade [him] from testifying in his own behalf in violation of the Fifth Amendment of the U.S. Constitution."

(5) The Superior Court referred the postconviction motion to a Commissioner for proposed findings of fact and recommendations. In a report dated December 15, 2009, the Commissioner recommended that the postconviction motion be denied. The Commissioner determined that Yelardy's ineffective assistance of counsel claim was without merit,<sup>2</sup> and that the evidentiary claim under DRE 609(b) was barred under Rule 61 as

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<sup>1</sup> *Yelardy v. State*, 2008 WL 450215 (Del. Supr.).

<sup>2</sup> See *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984) (holding that a defendant claiming ineffective assistance of counsel must show that counsel's representation fell below an objective standard of reasonableness and was prejudicial).

formerly adjudicated<sup>3</sup> and as procedurally defaulted because Yelardy's "new twists" on the claim could have been raised on direct appeal.<sup>4</sup>

(6) Yelardy filed objections to the Commissioner's report. By order dated March 2, 2010, the Superior Court adopted the report and denied Yelardy's motion for postconviction relief. This appeal followed.

(7) On appeal, Yelardy argues that he is entitled to a new trial under the presumed-prejudice standard articulated in *Cronic*.<sup>5</sup> We disagree. The record does not reflect, as Yelardy contends, that "there was a complete breakdown of the adversary process" or that defense counsel "completely abdicated his role as advocate" warranting relief under *Cronic*.

(8) Next, Yelardy argues that the Superior Court erred when failing to address his claim that the court's "incorrect application and interpretation" of DRE 609(b) violated his rights under the Fifth Amendment.<sup>6</sup> Again we disagree. As an aside, we reject Yelardy's claim

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<sup>3</sup> See Del. Super. Ct. Crim. R. 61(i)(4) (barring formerly adjudicated claim unless reconsideration is warranted in the interest of justice).

<sup>4</sup> See Del. Super. Ct. Crim. R. 61(i)(3) (barring claim not previously raised absent cause for relief from the procedural default and prejudice).

<sup>5</sup> See *United States v. Cronic*, 466 U.S. 648, 659-60 (1984) (articulating three situations in which the prejudice requirement under *Strickland* is presumed: (i) when the defendant is denied counsel at a critical stage; (ii) when counsel entirely fails to subject the prosecution's case to meaningful adversarial testing; and (iii) when the circumstances are such that there is an extremely small likelihood that even a competent attorney could provide effective assistance).

<sup>6</sup> See Del. Super. Ct. Crim. R. 61(i)(5) (providing that the procedural bar of Rule 61(i)(3) should not apply to a colorable claim that there was a miscarriage of justice because of a constitutional violation).

that the Superior Court erred when ruling that his 1976 robbery conviction was admissible for impeachment.<sup>7</sup> We need not, however, address that claim in this appeal. Assuming for sake of argument that the Superior Court erred when ruling that Yelardy could be impeached with his 1976 robbery conviction, it does not follow that Yelardy was, as a result of the error, deprived of his right to testify or to present a defense.

(9) There is no constitutional requirement that a defendant be free of the “chilling effect” created by impeachment.<sup>8</sup> A defendant may decide, as a strategic decision, not to take the witness stand to avoid the risk of impeachment.<sup>9</sup> If a defendant chooses not to testify, however, the defendant must live with the consequences.<sup>10</sup>

(10) In Yelardy’s case, as we decided on direct appeal, one of the consequences of his choosing not to testify is that he lost the opportunity for

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<sup>7</sup> Yelardy’s claim of impeachment error with respect to his 1976 robbery conviction relies on three grounds, none of which appears unassailable under Delaware law. First, Yelardy argues that, under DRE 609(b), when determining when a witness was “release[d] from the confinement imposed for that conviction” the crucial date is the initial release from confinement rather than a later release from confinement from parole. Second, Yelardy argues that, when applying DRE 609(a), robbery is not a crime of dishonesty. Third, Yelardy argues that DRE 609 required that the Superior Court engage in a balancing inquiry.

<sup>8</sup> *Brown v. United States*, 356 U.S. 148, 154 (1958) (providing that a defendant in a criminal case who takes the stand and testifies in his own defense may have his credibility impeached “like that of any other witness, and the breadth of his waiver is determined by the scope of relevant cross-examination”).

<sup>9</sup> *Id.* at 156.

<sup>10</sup> *Cf. Cooke v. State*, 977 A.2d 803, 842 (Del. 2009) (providing that a defendant’s fundamental decision whether to testify is “indeed [a] strategic choice [ ]” for which the defendant bears the consequence).

appellate review of his claim that the Superior Court erred when ruling that the 1976 robbery conviction was admissible for impeachment.<sup>11</sup> Yelardy has not demonstrated a legitimate basis to revisit that decision on postconviction relief.<sup>12</sup>

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>11</sup> *Yelardy v. State*, 2008 WL 450215, \*3 (Del. Supr.) (citing *Walker v. State*, 790 A.2d 1214, 1218 (Del. 2002) (citing *Fennell v. State*, 691 A.2d 624, 625 (Del. 1997))).

<sup>12</sup> Del. Super. Ct. Crim. R. 61(i)(4).